IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP.No. **473 of 2004**

Date of Decision : 12.6.2007

State of H.P. & another …Petitioners.

Versus:

Hari Chand & another …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No.

For the petitioners: Mr. J. K. Verma, Deputy Advocate General.

For respondent No.1: Mr. Sandeep Kaushik, Advocate.

Sanjay Karol, J (Oral).

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

Petitioners herein have assailed the award dated 26th December, 2003 passed by the H. P. Industrial Tribunal-cum-Labour Court, Shimla, in Ref. No. 140 of 1998 titled as Hari Chand vs. Forest Officer. In terms of the said award, respondent – employee has been directed to be re-instated in service w.e.f. 13th August, 1998 along with continuity in service and seniority without back wages.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

According to the petitioners, respondent No.1 was never employed with the petitioners and the award is faulted for the reasons that the Tribunal has wrongly held that respondent No.1 was in employment with the petitioner and that his services have been wrongly terminated without compliance of Section 25-F of the Act. However, according to respondent No.1, he has been in employment with the petitioners since March, 1981 and continued to work as Beldar till 26th January, 1987, when his services were wrongly and illegally dispensed with in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as' the Act').

Consequent upon the termination of his services, dispute was raised by the employee and after compliance of statutory provisions, a reference dated 13.8.1998 under Section 10 of the Act was made to the Tribunal.

Pursuant thereto, claim petition was filed by respondent No.1, which was duly replied by the petitioners, and evidence was led by the parties. The Tribunal considered the entire material on record and held that based on the material on record including the experience certificate dated 22nd August, 1985 issued by Shri D. R. Singhal, Range Forest Officer, respondent No.1 had been able to prove that he was in continuous employment with the petitioners prior to his alleged termination.

Learned counsel for the petitioners has argued that in view of the ratio of law laid down in ***Range Forest Officer*** vs. ***S. T. Hadimani*** (2002(3) SCC 25) and ***Municipal Corporation, Faridabad*** vs. ***Siri Niwas*** (2004 (8) SCC 195), the onus was heavy on respondent No.1 to show that he was in employment of the petitioners in accordance with the Act. According to him, the experience certificate has been procured and explanation of the said Officer has been called for in this regard.

Per contra, learned counsel for the petitioners submitted that the plea of explanation is an after thought and a cover up exercise to defeat the claim of respondent No.1 as he has been able to successfully discharge the burden and proved that he has been in continuous employment with the petitioners prior to his disengagement.

Record of the case was summoned and has been perused. During the pendency of the claim petition, respondent No.1 had got his statement recorded as PW-1. On oath, he has stated that he had worked from 1981 to January, 1987 and also placed on record the certificate issued by the Range Forest Officer being Ex. PA dated 22.8.1985. The same is reproduced as under:-

"***EXPERIENCE CERTIFICATE***

This is to certify that Shri Hari Chand son of late Shri Daya Ram of village Tiarmali, Post Office Dadahu and District Sirmaur (H.P.) is working in Renuka Forest Range (Renuka

Forest Division) for the last Five years on daily wages. He has knowledge of Mali duties.

He is sincere, punctual and hard worker. He bears a good character.

Sd/-
22.8.85
(D. R. Singhal)
Seal"

Importantly, there is no cross-examination by the petitioners in this regard. Therefore, the initial burden caste upon respondent No.1, was duly discharged by him. Petitioners did not produce any record to show that respondent No.1 was not in the employment of the petitioners and that the certificate is procured but importantly, produced the signatory of the certificate Shri D. R. Singhal, the concerned Range Forest Officer as RW-1, who duly certified the execution of the same. From the statement of RW-1, it is clear that he does not dispute the execution of the said document. He also does not deny that the respondent was not in the employment of the petitioners. Therefore, factual matrix of the judgment relied upon by the learned counsel for the petitioners is totally different from the case in hand. In my view, respondent No.1 has adequately discharged the onus caste upon him and also proved that he being in employment of the petitioners, his services have been wrongly terminated in violation of the Act.

In the statement recorded before the Tribunal, it has come on record that respondent No.1 has been pursuing his remedy before various authorities in accordance with law. In fact, as per his version, he had been assured of being taken back in employment by the D.F.O. as also the Range Forest Officer. The matter was pending before the

Conciliation Officer prior to the reference having been made under Section 10 of the Act, therefore, in my view, respondent No.1 has been able to sufficiently explain the delay. Record shows that he has been kept on visiting the department; the Guard, the Range Officer, the D.F.O., who assured that as and when muster-roll would be available, he would be called for an employment. He also wrote to the Forest Minister.

Learned counsel for respondent No.1 brought to my notice that pursuant to the said award, respondent No.1 had submitted his joining report and he was allowed to work till the execution of the award was stayed by this Court in terms of the order dated 21st December, 2004. In fact vide orders dated 6th September, 2005 , this Court allowed respondent No.1 to be re-employed subject to availability of work in the following terms:-

> "a) That respondent No.1 shall now be allowed to join the duty along with certified copy of the order. On being asked by the Court, learned Advocate General stated that respondent No.1 should appear before the Divisional Forest Officer, Renuka by or before 15th September, 2005 during office hours. He shall be allowed to resume duty and will be given work in terms of the impugned award of the Labour Court, of course subject to the rights and contentions of the parties in this writ petition;
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> (2) Since no opinion has been expressed by this Court whether respondent No.1 voluntarily abandoned the work after having worked for 22 days in February, 2004 or was not allowed to work by the functionaries of the State, therefore, it is ordered that if this is the factual position, petitioners will be free to deal with the matter as permissible under law, and after following the principles of natural justice, shall pass appropriate orders."

For all the aforesaid reasons, I see no reason to interfere with the order dated 26th December, 2003 passed by the learned Tribunal. The present writ petition is dismissed. The interim order dated 21st December, 2004 stands vacated. The petitioners shall allow respondent No.1 to join in terms of the award dated 26th December, 2003 passed by the H.P. Industrial Tribunal-cum-Labour Court, Shimla.

(Sanjay Karol),
Judge.

June 12, 2007.
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